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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 696 (PAE)

5 ARI TEMAN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.  
9 January 29, 2020  
9:40 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the  
Southern District of New York

17 KEDAR S. BHATIA

EDWARD A. IMPERATORE

18 Assistant United States Attorneys

19 JOSEPH A. DIRUZZO, III

JUSTIN GELFAND

20 Attorneys for Defendant

21 ALSO PRESENT: DANIEL ALESSANDRINO, NYPD

WILLIAM MAGLIOCCO, Paralegal, USAO

K1T7TEN1

(Trial resumed; jury not present)

(Time noted 9:42 a.m.; jury not present)

THE COURT: Good morning, everyone. Mr. Smallman tells me the jury is here, and so I will bring them out into the courtroom. I had an off-the-record conversation with counsel earlier when I appeared. Nobody had anything to raise, save that counsel noted a change in the handwriting on some of the more recent jury notes, and I will, at counsel's good suggestion, remind them to have the foreperson initial each note.

Does anyone have anything to raise before the jury comes in?

MR. GELFAND: No, your Honor.

MR. BHATIA: No, your Honor.

(Time noted 9:44 a.m.; jury present).

THE COURT: Good morning, ladies and gentlemen. Please be seated. All right. I will note for the record that all 12 members of our jury are here. I hope everyone had a good evening and a good morning. You may now, with everyone here, resume your deliberations.

One matter purely of housekeeping. I would ask just for future notes from the jury that each of them be initialed by your foreperson.

OK. Very good. With that, you may resume your deliberations. I will see you at a later point. Thank you.

K1T7TEN1

(Jury resumes their deliberations at 9:46 a.m.)

THE COURT: All right, counsel, be seated. As I mentioned yesterday, I have a multi-defendant conference this morning in one of the downstairs courtrooms. Mr. Smallman will be assisting me with that conference. My law clerk will be here in Mr. Smallman's stead. In the event we get a note, the CSO will notify my law clerk, we will share the note with you, and I will respond as soon as I can.

Steve our court reporter, who is assisting with this trial, will also be covering that conference, so we will be traveling as a pack back and forth as needed. I will need one person again from each team to stay close. My conference begins at 10:30. I don't know whether or not we will be called upon by our jury to do anything between now and then. See you soon.

(Time noted 10:33; jury not present).

THE COURT: All right. Be seated. Ladies and gentlemen, I have gotten a note which we're going to mark as jury note 8. It reads "Good morning. We the jury have reached a verdict," and it's signed by the foreperson number 2.

So, in a moment I will bring out the jury, and my practice is that I have Mr. Smallman take the verdict form from the foreperson; I review it just to make sure it is in form, in good order; and then I read aloud the verdict and ask the foreperson to confirm that that is in fact the jury's verdict.

K1T7TEN1

1 Upon the request of any party, then I poll the jury to make  
2 sure that is in fact each member's verdict. Is there a request  
3 for me to poll the jury?

4 MR. DIRUZZO: Yes, your Honor.

5 THE COURT: All right, then we will do that.

6 Obviously I am in no position to know what the verdict  
7 will be, but my practice regardless is to meet with the jury to  
8 thank them for their service. When I do that I also will tell  
9 them that they are at liberty to speak with anybody they wish  
10 to, but they're not required to speak with anybody, and I tell  
11 them as well that they may wish to consider -- if they are  
12 speaking about their experience with anybody -- hesitating to  
13 share what other people said in the jury room other than  
14 themselves. In other words, it's one thing to talk about your  
15 own views, it's another thing to give up what other jurors  
16 said. It's up to them ultimately, but that's the guidance I  
17 give them.

18 I don't know whether or not the nature of the verdict  
19 will require us to have any further business together but,  
20 regardless, I will ask you all to stay. When I go visit the  
21 jury to thank them, I will then come back out and take care of  
22 what, if any, business remains.

23 Anything counsel wishes to raise before Mr. Smallman  
24 brings in the jury?

25 MR. BHATIA: No, your Honor.

K1T7TEN1

Verdict

1 MR. DIRUZZO: No, your Honor.

2 THE COURT: All right. Mr. Smallman, let's bring in  
3 the jury.

4 MR. DIRUZZO: One thing, your Honor. I assume you  
5 would like counsel and the defendant to stand when you  
6 pronounce the verdict?

7 THE COURT: It's not necessary.

8 MR. DIRUZZO: OK.

9 (Time noted 10:37 a.m.; jury present)

10 THE COURT: Ladies and gentlemen, be seated. I have  
11 received a note which reads "Good morning. We the jury have  
12 reached a verdict," and it's signed by your foreperson. May I  
13 ask that the foreperson please hand to Mr. Smallman a copy of  
14 your signed verdict form.

15 All right. I have reviewed the verdict form, and it  
16 is in good order, and it has been signed by 12 people. Here is  
17 what I'm going to do. I'm going to read aloud the verdict form  
18 and then I will ask the foreperson whether this is in fact the  
19 jury's verdict. And I will expect -- I will read it, and you  
20 will let me know whether or not I have read it correctly.

21 After that, Mr. Smallman one by one will ask each  
22 member of the jury whether what I've read aloud is in fact the  
23 jury's verdict. So listen as I read aloud the verdict form so  
24 that you can answer his question.

25 After that, I will have some closing words of thanks

K1T7TEN1

Verdict

1 and excuse you, and then I will be pleased to spend a moment  
2 with you in the jury room thanking you in person for your  
3 service.

4 All right, with that, the jury's verdict is as  
5 follows:

6 On Count one, charging bank fraud with respect to the  
7 April 2019 checks: The jury's verdict is guilty.

8 With respect to Count Two, charging bank fraud with  
9 respect to the March 2019 checks: The jury's verdict is  
10 guilty.

11 With respect to Count Three, charging wire fraud with  
12 respect to the April 2019 checks: The jury's verdict is  
13 guilty.

14 With respect to Count Four, charging wire fraud as to  
15 the March 2019 checks: The jury's verdict is guilty.

16 And following the verdict appear the signatures of 12  
17 people.

18 Juror 2, is that in fact the jury's verdict?

19 JUROR: Yes, it is, your Honor.

20 THE COURT: Thank you.

21 Mr. Smallman, if you would kindly poll the jury.

22 DEPUTY CLERK: Juror 1, is that your verdict?

23 JUROR: Yes.

24 DEPUTY CLERK: Number two?

25 JUROR: Yes.

K1T7TEN1

Verdict

1           DEPUTY CLERK:   Juror 3?

2           JUROR:   Yes.

3           DEPUTY CLERK:   Juror 4?

4           JUROR:   Yes.

5           DEPUTY CLERK:   Juror 5?

6           JUROR:   Yes.

7           DEPUTY CLERK:   Juror 6?

8           JUROR:   Yes.

9           DEPUTY CLERK:   Juror 7?

10          JUROR:   Yes.

11          DEPUTY CLERK:   Juror 8?

12          JUROR:   Yes.

13          DEPUTY CLERK:   Juror 9?

14          JUROR:   Yes.

15          DEPUTY CLERK:   Juror 10?

16          JUROR:   Yes.

17          DEPUTY CLERK:   11?

18          JUROR:   Yes.

19          DEPUTY CLERK:   And Juror 12?

20          JUROR:   Yes.

21          DEPUTY CLERK:   Thank you.

22           THE COURT:   All right.   Ladies and gentlemen, I am  
23   about to excuse you, but I just want to take a moment and thank  
24   you.   One of the real honors of my job is being able to watch  
25   at least in the detached way that I do jurors do their job --

K1T7TEN1

Verdict

1 at least the public parts of their job. It was quite apparent  
2 to me that from Wednesday through today all of you have been  
3 really locked in and very, very focused on the awesome  
4 responsibility you have as jurors. I could tell that just from  
5 the level of attention you were paying during the trial, the  
6 active note taking, the active listening that was apparent on  
7 all of your faces, and the thoughtful detailed notes and the  
8 obvious intensity that you brought to your deliberations.

9 We are all blessed and fortunate to have members of  
10 the public serving as jurors like you, doing your job as  
11 conscientiously and sincerely as you did, and I thank you from  
12 the bottom of my heart for your service.

13 In a moment, what I'm going to do is ask you to go  
14 into the jury room, collect your things. I'm going to come in  
15 with the members of my staff so I can shake all of your hands  
16 and thank you for your service and answer any questions and get  
17 any feedback you have about your jury service.

18 So, with that, you have my thanks. I will see you in  
19 the jury room in just a moment. As I said at the beginning,  
20 with this you are now excused from your jury service. You will  
21 get a letter from me in the mail in short order thanking you  
22 formally for your service but as a result of this your jury  
23 duty is now complete. Thank you. I will see you in the jury  
24 room in a moment.

25 (Jury dismissed)



K1T7TEN1

1           THE COURT: All right. Be seated. Counsel, I will be  
2 out in a few minutes to take care of the various things that  
3 one must take care of after a verdict of this nature. The  
4 items I have on my list to cover include the defendant's status  
5 between now and the date of sentencing, the date for any  
6 post-trial motions, a sentencing date, and then there is the  
7 outstanding issue of the grand jury subpoena.

8           There may be other issues we need to take up. To the  
9 extent counsel want to confer on any of those matters, this  
10 will be a good time to do that. When I come out I will take up  
11 those and any other issues that counsel wish to raise.

12           (Recess)

13           THE COURT: We're going to mark the jury's verdict  
14 form as juror note 9. All right. So, there are a number of  
15 issues to take up. Let's begin with a sentencing date and a  
16 motions date.

17           Defense, do you expect to be making post trial  
18 motions?

19           MR. DIRUZZO: Yes, your Honor, we anticipate a 29(c)  
20 and a motion for a new trial. We have asked counsel for the  
21 government if they would be amenable for a two-week extension  
22 from the normal time, that would be four weeks in total.

23           THE COURT: Just give me the proposal as to when you  
24 would like to submit your motion. You can expect me to be  
25 receptive.

K1T7TEN1

1 MR. DIRUZZO: Certainly, Judge. Today is the 29th, so  
2 February 26.

3 THE COURT: For your motion?

4 MR. DIRUZZO: For our post-trial motions, correct.

5 THE COURT: Government, when would you want to respond  
6 to that?

7 MR. BHATIA: We would request a month from that date,  
8 your Honor.

9 THE COURT: Four weeks from the 26th? So that would  
10 be March 25, correct?

11 MR. BHATIA: That's right.

12 THE COURT: All right. Defense, I'm happy to set that  
13 schedule. I don't think, knowing the case well as I do, that I  
14 will need a reply. I think after I read the motions, if there  
15 is something that I need further help on, I will commission a  
16 reply, but I'm not going to build a reply into the schedule and  
17 add to the work. I think I can be able to make an assessment  
18 in whatever direction based on the two motions, and if I need a  
19 reply, I will commission one.

20 MR. DIRUZZO: OK, Judge.

21 THE COURT: So, I'm happy to approve those dates.

22 All right. With respect to sentencing, I would  
23 envision a date approximately four months from now, counsel?  
24 Any reason why there is some special problem here that should  
25 suggest something shorter? Defense counsel, I assume you are

K1T7TEN1

1 not seeking an expedited sentencing date which would mean for  
2 going the draft PSR?

3 MR. DIRUZZO: Correct, we are not expediting, so four  
4 months would be perfectly fine, your Honor.

5 THE COURT: The norm in this district is about three  
6 and a half months, but given the need to resolve post-trial  
7 motions, it seems to me smart to add a couple weeks.

8 Counsel, how about June the 4th at 10 a.m.?

9 MR. BHATIA: That's good for the government.

10 MR. DIRUZZO: That's good for us.

11 THE COURT: Let's assume that is the date. Obviously,  
12 in the event there is some unexpected change of circumstance,  
13 I'm certainly open to moving that, but let's set sentencing  
14 down for June the 4th.

15 Defense submissions in connection with sentencing are  
16 due two weeks before sentencing, and the government's  
17 submission is due one week before sentencing.

18 Defense, you should arrange for any pretrial interview  
19 of your client by the probation department within the next two  
20 weeks and, government, you should get your offense version to  
21 the probation department within the next two weeks.

22 MR. BHATIA: We will.

23 THE COURT: So, having taken care of motions and  
24 sentencing, there is the issue of the defendant's continued  
25 release and the terms of that release pending sentencing.

K1T7TEN1

Government?

MR. BHATIA: Yes, your Honor. In this case we are seeking remand, and the reason for that is under 3143, your Honor, there is a presumption here at this stage of the proceeding, and of course the circumstances have changed quite a bit from before trial.

THE COURT: One moment. This is not, of course, the case under 3143 where detention is mandatory, correct? This is not like a heavy duty narcotics case or something like that.

MR. BHATIA: No.

THE COURT: So, refresh my memory, a post-trial presentencing in a nonmandatory case, what the standards now are.

MR. BHATIA: At this point, your Honor, the Court must find by clear and convincing evidence that the person is not likely to flee or pose a danger of safety to other persons or the community.

THE COURT: So clear and convincing applies both to the flight and danger provisions, and the burden is on the defendant.

MR. BHATIA: That's right.

THE COURT: And which are you invoking here in making that argument? Danger, flight, or both?

MR. BHATIA: Both, your Honor.

THE COURT: Explain.

K1T7TEN1

1 MR. BHATIA: So, under a risk of flight, your Honor,  
2 we have conferred with defense counsel about this. As we  
3 understand it, the defendant does not have substantial assets  
4 that could be used to secure a bond otherwise, and we think  
5 that those also tend to show lack of ties to the community,  
6 which goes to the risk of flight.

7 THE COURT: I'm sorry, let's slow down here. What are  
8 the current terms of release?

9 MR. BHATIA: A \$25,000 bond cosigned by one  
10 financially responsible person.

11 THE COURT: Who is that?

12 MR. BHATIA: I don't recall at this point, your Honor,  
13 who the FRB is.

14 THE COURT: Who is it, defense counsel?

15 MR. GELFAND: An individual named Levi Herman.

16 THE COURT: Who is that?

17 MR. GELFAND: A close friend of Mr. Teman's.

18 THE COURT: OK. Go ahead, government counsel. And  
19 your concern is that the existing bond and Mr. Herman's  
20 signature on it are not enough to insure the defendant's  
21 presence?

22 MR. BHATIA: That's right, your Honor.

23 THE COURT: What has the defendant's presence been  
24 like with pretrial supervision and appearance in court?

25 MR. BHATIA: The defendant has appeared in court and,

K1T7TEN1

1 as we understand it, he has complied with the terms of his  
2 pretrial supervision, except we have noted for your Honor  
3 before trial and during trial the defendant's statements about  
4 the victims in this case, and the defendant made public  
5 statements disparaging witnesses in this case.

6 THE COURT: Right. But, look, there was no order in  
7 place directing him not to do that. It wasn't a smart decision  
8 but it wasn't against any rule or law. Once I directed him not  
9 to do that, did he comply?

10 Government? Once I directed him not to disparage the  
11 victims, are you aware of any noncompliance by the defendant?

12 MR. BHATIA: Not after that.

13 THE COURT: I am trying to understand -- look, I  
14 appreciate your views about the defendant, but what's the  
15 basis -- articulate for me why you think he is likely to flee?

16 I appreciate that the burden is on the defendant, but  
17 the burden is arguably met simply by the track record, which is  
18 that Mr. Teman has shown up; he has shown up despite of the  
19 distress that the note that we are all aware of reflected. The  
20 facts on the ground suggest that he is going to show up. Do  
21 you have his travel documents?

22 MR. BHATIA: I believe he has surrendered his  
23 passport, your Honor, yes.

24 THE COURT: All right, you believe he has surrendered  
25 his travel documents. Is there any reason to think he has

K1T7TEN1

1 assets abroad?

2 MR. BHATIA: We don't, your Honor.

3 THE COURT: Is there any reason to believe he has any  
4 existing travel documents?

5 MR. BHATIA: No.

6 THE COURT: Is there any to believe he has friends or  
7 family abroad?

8 MR. BHATIA: I don't know one way or the other.

9 THE COURT: So, just articulate for me -- beyond the  
10 fact that he has now been convicted of this offense and that he  
11 is no fan of the customers whose testimony was presented  
12 against him, what's the reason to think he is not going to show  
13 up?

14 MR. BHATIA: Your Honor, at this point there is a  
15 substantial sentence, at least a guideline sentence -- there is  
16 a possibility of a substantial sentence awaiting the defendant,  
17 your Honor, and so we think that that is a substantially  
18 changed circumstance. And the defendant, as far as we know,  
19 doesn't have other financial ties that tie him to the United  
20 States, or that would require him to come to court, and so we  
21 think that at this point the defendant can't show by clear and  
22 convincing evidence that he will reappear.

23 THE COURT: What about the fact that he has shown up  
24 each time? I mean he was facing a substantial sentence. The  
25 evidence that you have offered is not different from what he

K1T7TEN1

1 would have realistically expected.

2           You know, day in and day out he has been here. Why  
3 doesn't that clear the legal burden? I am asking you to  
4 explain to me why you're worried about Ari Teman not showing  
5 up.

6           MR. BHATIA: I think prior to trial the defendant had  
7 every expectation he would be acquitted, and I think the jury's  
8 verdict has changed that fact, and so I think at this point the  
9 possibility of a jail sentence has come into more stark relief.

10          THE COURT: Let me hear from defense counsel briefly  
11 on flight, and then we will turn to danger.

12          MR. DIRUZZO: Your Honor, we submit that Mr. Teman has  
13 always showed up; he has always complied. His compliance  
14 demonstrates, as your Honor has noted, that he is not a flight  
15 risk. It is true that Mr. Teman for better or worse does not  
16 have substantial assets. He is not that well healed, so to  
17 speak, so he can't give up as a security that which he does not  
18 have.

19          THE COURT: Let me ask you this. I mean this is a  
20 very light bail package and the circumstances have changed.  
21 Part of my job is to tailor any bail package to the needs of  
22 assuring his appearance. Surely he has somebody else who has  
23 moral suasion over him than Mr. Herman. Are there other  
24 potential signatories here?

25          MR. DIRUZZO: With the Court's indulgence.



K1T7TEN1

1 THE COURT: Does he have parents, that kind of thing?

2 MR. DIRUZZO: Your Honor, we believe that Mr. Teman's  
3 college rabbi would be amenable to signing some type of bond to  
4 ensure Mr. Teman's appearance between now and sentencing.

5 THE COURT: What?

6 MR. DIRUZZO: To ensure Mr. Teman's appearance, that  
7 he doesn't leave.

8 THE COURT: Look, my inclination would be to intensify  
9 the conditions of release just to assure his appearance, and  
10 I'm trying to work through with you what the tools are in the  
11 tool box.

12 There is the possibility of electronic monitoring, and  
13 there is the possibility of another cosigner. I think you're  
14 representing to me that there is not a possibility of posting  
15 any security because Mr. Teman apparently doesn't have money,  
16 or so you represent.

17 MR. DIRUZZO: Yes, your Honor. But there is the  
18 possibility that Mr. Teman's college rabbi would be willing to  
19 sign.

20 THE COURT: We would need to obviously have the  
21 government have access to him to determine whether there is  
22 moral suasion, and if not that person there would be somebody  
23 else. Does Mr. Teman have parents?

24 MR. DIRUZZO: Yes, he does.

25 THE COURT: Would they be in a position to cosign?

K1T7TEN1

1 MR. DIRUZZO: No, he has -- my understanding is he is  
2 estranged from his family.

3 THE COURT: Where does his family live?

4 MR. DIRUZZO: Unfortunately, his parents -- most of  
5 his cousins live in the States but his parents do live in  
6 Israel. And he hasn't talked to them for an extended period of  
7 time.

8 THE COURT: Does he have siblings?

9 MR. DIRUZZO: I believe he has one sister, but he is  
10 also estranged from his sister and hasn't spoken to her in  
11 quite some time. He is not exactly sure of her whereabouts.

12 We would submit, your Honor, that the possibility of  
13 perhaps an electronic monitor would be sufficient to alleviate  
14 any concerns that the prosecution or the Court may have.

15 THE COURT: Government, what about a revised bail  
16 package that puts in place intensified pretrial supervision,  
17 essentially electronic monitoring effective immediately by  
18 pretrial and adding a cosigner to sign the PRB? The idea would  
19 then be if there is any slip-up, you will be right back in here  
20 seeking remand, but at least I'm going step by step and not  
21 jumping to the conclusion that Mr. Teman is not going to  
22 appear.

23 MR. BHATIA: Your Honor, I think an intermediary  
24 ground might be home detention with electronic monitoring. I  
25 think that would allow the defendant -- that would allow to

K1T7TEN1

1 ensure the defendant appear for sentencing.

2 THE COURT: Where is the defendant's home?

3 MR. BHATIA: The defendant, as I understand it, lives  
4 in Florida.

5 THE COURT: So, you're proposing home detention with  
6 electronic monitoring?

7 MR. BHATIA: That's right.

8 THE COURT: And I take it with leave to attend to  
9 medical appointments and the like and otherwise as approved by  
10 the pretrial services -- by pretrial services?

11 MR. BHATIA: That's correct.

12 THE COURT: All right. And what's your view about the  
13 addition of another signatory?

14 MR. BHATIA: I think an additional signatory would be  
15 appropriate. I think that makes sense. And if there were to  
16 be an additional signatory, then an increase in the bond value  
17 as well. Right now it's a \$25,000 bond.

18 THE COURT: All right. Defense counsel, I understood,  
19 Mr. DiRuzzo, you to be fine with electronic monitoring. Often  
20 that goes with home detention; that's part of what makes  
21 electronic monitoring effective.

22 Obviously, electronic monitoring permits the subject  
23 to attend to medical appointments, and if there is another  
24 carve-out or two that you need me to put on the record, I can,  
25 otherwise it's usually left to the discretion of pretrial

K1T7TEN1

1 services. What's your view about that?

2 MR. DIRUZZO: Just for clarity, medical and mental  
3 health, the full ambit, but yes.

4 THE COURT: All right. But with those carve-outs  
5 you're fine with that?

6 MR. DIRUZZO: Yes.

7 THE COURT: I mean what I'm concerned about, to be  
8 honest -- based on the little exchange I've had with you -- is  
9 the level of estrangement that Mr. Teman has from people who  
10 are usually close to a defendant. It's a circumstance that  
11 raises a natural concern about rootlessness.

12 Can you tell me something about his roots? In other  
13 words, are their anchors in his life? He doesn't have any  
14 money. It sounds like his job, therefore, must be in some  
15 degree of perilous shape. The members of his immediate yet  
16 family don't speak to him. Help me out here.

17 MR. DIRUZZO: With the court's indulgence, your Honor.

18 THE COURT: Yes.

19 MR. BHATIA: Your Honor, I just have one comment  
20 before you resume with defense counsel. My recollection is  
21 that Levy Herman might have been the individual who received  
22 the \$4,000 check, the bank deposit from the scheme, as we  
23 alleged in the case.

24 THE COURT: Right.

25 MR. BHATIA: We wanted to flag that fact for your

K1T7TEN1

1 Honor.

2 THE COURT: Duly flagged, but I'm not sure that  
3 changes anything. I mean --

4 MR. BHATIA: In addition, the fact that the  
5 defendant's parents are abroad also raises questions.

6 THE COURT: I am hearing you. I mean I am startled by  
7 the level of estrangement in the defendant's life, and that is  
8 a source of concern. I'm working through that with counsel to  
9 make sure that my outcome here is measured to the facts as they  
10 are emerging.

11 MR. GELFAND: Your Honor, just kind of backing up for  
12 a second, and just because we're on the record now I know that  
13 some of these brief at the time immaterial conversations had  
14 come out, but I have known Mr. Teman personally since freshman  
15 year of college. We have maintained a friendship since then.  
16 What I can represent is that he has built his own roots in New  
17 York and subsequently Florida -- in the Southern District of  
18 Florida, to be precise. He was fairly sick several years ago.  
19 During that time period, your Honor, his parents, he was  
20 estranged from them, they didn't come to see him, they didn't  
21 come to help him in any way. There is no relationship there,  
22 and as a practical matter he has built kind of a family  
23 environment for himself.

24 There is an individual rabbi KLar -- K-l-a-r -- and  
25 that individual's family -- who unremarkable at the time but in

K1T7TEN1

1 a remarkable way had showed up to watch portions of this trial  
2 and to support Mr. Teman. They are kind of where Mr. Teman  
3 tends to go -- when bond conditions were not at issue -- for  
4 religious holidays.

5 THE COURT: That's in New York? That person is a New  
6 Yorker?

7 Mr. Teman, just in your legal interests, let me hear  
8 through counsel.

9 MR. GELFAND: The sons live in Manhattan, your Honor.  
10 The parents live in West Orange.

11 THE COURT: If I have a home detention with electronic  
12 monitoring, will he be in Florida or New York?

13 MR. GELFAND: Florida, your Honor, in his Miami  
14 apartment.

15 THE COURT: How is Mr. Teman affording the travel back  
16 and forth to New York and whatever hotel or stay arrangement he  
17 had during and in connection with the trial?

18 MR. GELFAND: Your Honor, to be candid, he has  
19 exhausted most of his resources, and so, as I understand it, he  
20 had some money saved up that's basically exhausted. He has  
21 been able to borrow some additional funds to just kind of pay  
22 the expenses, as I understand it, your Honor.

23 As a practical matter, I mean he is not going  
24 anywhere. He has fully been engaged with his defense. He came  
25 to St. Louis, to my office, with the Court's permission several

K1T7TEN1

1 weeks ago. I will represent, your Honor, something I have  
2 never done with any other client, he stayed at my house with my  
3 family. You know, he has known about the obvious possible  
4 consequences. Of course, we all hoped the verdict would come  
5 down a different way -- that goes without saying in any  
6 trial -- however, he is aware of the possible consequences, and  
7 obviously the process that the court will go through for  
8 sentencing. He has fully been engaged in his defense. He has  
9 been here every single time. He has been in regular contact  
10 with his pretrial services officer.

11 THE COURT: You're not aware of any breach of any  
12 condition of pretrial supervision.

13 MR. GELFAND: No, your Honor, I'm not. And on top of  
14 all of this there are pretty serious -- as the Court is  
15 aware -- mental health issues that are finally kind of under --  
16 as much as mental health conditions can ever be totally under  
17 control, they are under control in the sense that he has a team  
18 of people and it seems to be working. I mean candidly we've  
19 noticed a difference since the note that we are all aware of,  
20 and more common contact in the weeks leading up to trial, and I  
21 would like him to continue with that for everyone's benefit,  
22 including obviously his own but not limited to his own.

23 THE COURT: All right. Does anyone have anything else  
24 to add?

25 MR. BHATIA: No, your Honor.

K1T7TEN1

1 MR. GELFAND: No.

2 THE COURT: I think it is actually a closer question  
3 than I had first appreciated, but in the end Mr. Teman's  
4 consistent compliance with the terms of pretrial supervision,  
5 coupled with the Draconian consequences to him were he not to  
6 comply, allows me by a narrow margin to conclude that he has  
7 met his burden of showing by clear and convincing evidence that  
8 he is not a risk of flight.

9 That is contingent on certain conditions being imposed  
10 and subject to the conversation I'm about to have with the  
11 government about danger to the community. It seems to me to  
12 assure his appearance, I would make the following changes to  
13 the existing regimen.

14 Specifically, I will impose a condition of home  
15 detention with electronic monitoring, with leave of course to  
16 attend to medical and mental health appointments.

17 Second, I will ask that there be a second signatory to  
18 the existing \$25,000 personal recognizance bond.

19 Government counsel, I don't think the difference  
20 between \$25,000 and \$50,000 is consequential here. \$25,000 is  
21 still a lot of money, and somebody is not going to want to  
22 forego that. The central issue here is not between 25 and let  
23 us say \$50,000. It turns on whether the individual in question  
24 is somebody who has moral suasion over Mr. Teman so that Mr.  
25 Teman would not want that person to lose that amount of money.



K1T7TEN1

1           So, I will add home detention with electronic  
2 monitoring, with carve-outs for medical and mental health  
3 appointments and otherwise as supervised by the probation  
4 department. And I will add the requirement of a second  
5 cosigner to the existing bond.

6           This is all contingent on my not being persuaded that  
7 there is a danger to the community.

8           Mr. Bhatia, you have an argument, I gather, you want  
9 to make as to that?

10          MR. BHATIA: Yes, your Honor. The danger to the  
11 community is with regard to the comments made about a victim as  
12 well as the comments made about the Court in the letter.

13          THE COURT: What comment did he make about the Court?

14          MR. BHATIA: There were comments in the note about the  
15 prosecutor and the Court. There is also the tweet that was  
16 right before trial.

17          THE COURT: The comments that I saw about the  
18 prosecutor were snarky and went to -- were jibes. Why is that  
19 a danger to the community? That's just juvenile speech.

20          MR. BHATIA: Your Honor, I think those are the facts  
21 we have, and I think on the defendant's burden I think it also  
22 contributes to the need for detention.

23          THE COURT: Is there any reason to think he is going  
24 to hurt somebody?

25          MR. BHATIA: No.

K1T7TEN1

1 THE COURT: Is there a reason to think he is going to  
2 defraud somebody?

3 MR. BHATIA: Your Honor, I think that's probably a  
4 closer call.

5 THE COURT: That's the issue here.

6 MR. BHATIA: I think we are aware of instances where  
7 we think the defendant has taken action against people who have  
8 sort of -- one moment, your Honor.

9 Your Honor, so I wanted to confer with Mr. Imperatore  
10 for a moment. As we mentioned in our grand jury letter, we are  
11 aware of other conduct that we believe is fraudulent.

12 THE COURT: Right.

13 MR. BHATIA: So that does give us pause. The  
14 defendant -- also as we heard at trial -- has hundreds of  
15 GateGuard customers, and so that gives him access.

16 THE COURT: Why isn't the right answer to say -- to  
17 add as a condition the defendant is not to create or deposit  
18 any remotely created check and is not to draw on any other  
19 person's credit card -- bill any other person's credit card  
20 without the express written permission of the pretrial services  
21 officer?

22 MR. BHATIA: I think that would be appropriate.

23 THE COURT: That should guard against the sort of  
24 mischief one would naturally be worried about, right?

25 MR. BHATIA: I think that's right. And I think we

K1T7TEN1

1 would also ask for no new lines of credit and some of the other  
2 standard bail conditions.

3 THE COURT: Mr. Gelfand, that sounds reasonable,  
4 doesn't it?

5 MR. GELFAND: Yes, your Honor, it does. To be blunt,  
6 obviously Mr. Teman is well aware of the possible consequences  
7 of --

8 THE COURT: I understand that. But, look, because he  
9 doesn't want the bail to be revoked pending sentencing, if I am  
10 explicit that a condition of bail is the ones I just  
11 mentioned -- including no remotely created checks -- that gives  
12 him an extra determinable incentive.

13 MR. GELFAND: Yes, your Honor.

14 THE COURT: So what I am going to do is in addition to  
15 what I previous wrote is I'm going to write in the following:  
16 "Defendant is not to create or deposit any remotely created  
17 check. Defendant is not to" -- help me, Mr. Gelfand, with the  
18 right formulation to the use of credit cards. He presumably  
19 has credit cards from other people. I don't want him to hit  
20 those. I want to come up with the right formulation.

21 Mr. Gelfand?

22 MR. GELFAND: I think the way to go is my  
23 understanding is that with some historic business transactions  
24 there is kind of an infrastructure of what we understand is  
25 agreed upon but, in any event, essentially recurring automatic

K1T7TEN1

1 credit card transactions.

2 What we would say is to give Mr. Teman a day or two to  
3 basically stop those from happening through I think it's PayPal  
4 or whatever the infrastructure is.

5 THE COURT: I am going to write "Defendant is to  
6 immediately terminate all auto pay" --

7 MR. GELFAND: And then we would ask that any such  
8 transactions be permissible upon written approval obtained  
9 between now and the time that the transaction occurs.

10 THE COURT: All right. "Defendant is to immediately  
11 terminate all auto pay credit card arrangements. Defendant" --  
12 one moment -- "with him or any company" -- "any business with  
13 which he is affiliated."

14 I want to make it clear that this binds GateGuard and  
15 the other companies.

16 Mr. Gelfand, here is what I propose: "Defendant is  
17 not to create or deposit any remotely created check. Defendant  
18 is to immediately terminate all auto pay credit card  
19 arrangements with him or any business with which he is  
20 affiliated. Defendant may not invoice or bill any person or  
21 business without the written approval of his pretrial services  
22 officer."

23 It seems to me that that should protect against any  
24 potential fraud, while building in some flexibility and some  
25 ability to do business. But I am worried under the

K1T7TEN1

1 circumstances here -- particularly given the financial need  
2 that is evident on the face of this case, and is evidence on  
3 the colloquy we've had -- I want to avoid any latitude --  
4 assuming compliance with these conditions -- to rip somebody  
5 off.

6 MR. GELFAND: One second, your Honor?

7 THE COURT: Yes.

8 MR. GELFAND: I don't think this will move the needle  
9 one way or the other, but there is just a very practical impact  
10 on a word. Apparently PayPal's interface basically permits the  
11 immediate suspension of any sort of auto pay, and what we would  
12 ask is that he be ordered to immediately suspend, which  
13 effectively --

14 THE COURT: Why don't I say "suspend or terminate".

15 MR. GELFAND: Fair enough.

16 THE COURT: That's fine.

17 MR. GELFAND: And then could I request two unrelated  
18 --

19 THE COURT: "Immediately suspend or terminate." One  
20 moment. Go ahead.

21 MR. GELFAND: Your Honor, these are unrelated to that  
22 issue.

23 THE COURT: All right. Let me just finish that issue.  
24 Are we done with danger to the community? Anyone have anything  
25 else to add?

K1T7TEN1

1 MR. BHATIA: Your Honor, on the bail, we wanted to get  
2 a representation from the defense, if possible, about the fact  
3 that Mr. Teman is only a United States citizen and does not  
4 have any other travel documents. I wasn't a part of the case  
5 when the initial bail conditions were set, so I'm not familiar.

6 THE COURT: Mr. Gelfand, I think that's a more than  
7 fair question. Is your client only an American citizen?

8 MR. GELFAND: Your Honor, my understanding is my  
9 client is only a U.S. citizen and that he has no travel  
10 documents other than the U.S. passport that was turned over.

11 THE COURT: I am going to ask that to Mr. Teman.

12 Mr. Teman, are you under oath. Do you understand  
13 that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: If you make a false statement in response  
16 to what I am about to say, that could subject you to penalties  
17 of perjury.

18 THE DEFENDANT: I understand.

19 THE COURT: Are you a citizen of any country other  
20 than the United States?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: And have you surrender all of your travel  
23 documents including passports?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: OK, very good.

K1T7TEN1

1 I think, Mr. Bhatia, that does the trick. With that  
2 then -- again, finding it a close call -- I do find that Mr.  
3 Teman by clear and convincing evidence has shown me that  
4 subject to the rather muscular conditions I put in place he is  
5 not a danger to the community.

6 There is no basis other than speculation for me to  
7 assume that Mr. Teman could be a danger in any way other than  
8 in a financial or fraud way. There is no history. He hasn't  
9 been physically harming people or threatening people. I'm  
10 certainly aware that he has made provocative remarks to  
11 customers; he has engaged in juvenile speech; he has shown a  
12 vindictive streak, including a commentary about taking adverse  
13 action against people on days when they are deeply religious  
14 observant. None of this reflects well on him, but in the end  
15 none of it suggests an aptitude towards violence or anything  
16 like that. The real risk is that he would financially harm  
17 somebody. The conditions that I have read into the record a  
18 moment ago seems to me are sufficient safeguards against that  
19 conduct.

20 In the event there is a breach of any of those, Mr.  
21 Teman, be aware strict rules apply. If you breach any of these  
22 conditions, you can expect the government to move for your  
23 remand, and you can expect me to be receptive to such an  
24 application. Do you understand that?

25 MR. GELFAND: Yes, Judge.

K1T7TEN1

1 THE COURT: Mr. Teman, do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Government, anything further?

4 MR. BHATIA: Nothing further.

5 THE COURT: All right.

6 MR. GELFAND: Your Honor, I'm sorry. Two quick issues  
7 that I would request the Court to include in its conditions.

8 Number one, my understanding is that his mental health  
9 and medical providers -- and I think he had actually referenced  
10 this to you early on in this case -- they basically have him  
11 doing several mile walks outside on a daily basis. I would ask  
12 that he be permitted to continue that.

13 THE COURT: Look, I've said defendant has leave to  
14 attend to medical and mental health appointments. I construe  
15 that to mean obligations that are ordered by such a  
16 professional.

17 MR. GELFAND: OK. And then the other issue -- which I  
18 think is already embedded in the pretrial conditions -- is I  
19 don't know whether this will be necessary, but permission to  
20 travel if necessary to St. Louis to meet with me in preparation  
21 for sentencing.

22 THE COURT: Why is that necessary?

23 MR. GELFAND: It's probably not.

24 THE COURT: Let's wait and see if it's necessary.

25 MR. GELFAND: OK.



K1T7TEN1

1 THE COURT: I'm not averse to it, but it's a different  
2 type of representation than in connection with trial. My guess  
3 is between phone, Skype and your existing bond of friendship  
4 and trust, you can probably get a lot done remotely, but I'm  
5 disinclined to needlessly do that. Right now the travel  
6 restrictions are presumably the Southern District of New York  
7 and the Southern District of Florida.

8 MR. GELFAND: That's fine. And if we need anything  
9 more --

10 THE COURT: I'm sorry. Right now it's the Southern  
11 District and Eastern Districts of New York -- which includes  
12 our airports -- and the Southern District of Florida. If on an  
13 ad hoc basis you need leave for him to come visit you, I am  
14 certainly not inflexible.

15 MR. GELFAND: Understand.

16 THE COURT: Anything else with respect to bail?

17 MR. BHATIA: Nothing else.

18 THE COURT: Look, Mr. Teman, let me just speak to you  
19 directly. You know, you've got sentencing coming up in four  
20 plus months. How you behave, how you comply with the  
21 conditions of release, has potential consequences in terms of  
22 sentencing. It's an opportunity for you to demonstrate your  
23 ability to comply with the law, in particular the rules that I  
24 have set out as conditions of your release.

25 So, to begin with, if nothing else, your self interest

K1T7TEN1

1 in making as good a presentation as you can in connection with  
2 sentencing should lead you to scrupulously comply with these  
3 conditions. Beyond that though there is the risk that if you  
4 don't comply, the government will move for your remand and I,  
5 if I find a breach, will grant that. That's the last place you  
6 want to be in. So, you are well advised to turn square corners  
7 here, and if you have any doubt about whether something is  
8 permissible, be in touch with your very able and dedicated  
9 counsel to guide you before you do something. Understood?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: All right. I'm going to sign this.  
12 Anything else with respect to bail?

13 MR. BHATIA: No, your Honor.

14 THE COURT: All right. Now, in terms of the cosigner,  
15 I have given a week to get the second cosigner. Defense, what  
16 you should do is arrange for the government to meet that person  
17 soon so we don't need to adjourn that date.

18 Government, your role here is to determine whether the  
19 person has moral suasion, whether they are an appropriate  
20 cosigner, whether there is a risk to them of losing the  
21 \$25,000. The fact that they may have had some business  
22 arrangement with the defendant may in some sense factor into  
23 the analysis. It's not clear to me that it makes the person  
24 less as opposed to a more suitable signatory. It would be  
25 surprising for a defendant to have a signatory with whom he had

K1T7TEN1

1 more detached -- more close ties -- and sometimes those include  
2 financial ones.

3 MR. BHATIA: Understood.

4 THE COURT: All right. Is there anything else I need  
5 to take up other than the grand jury subpoena?

6 MR. GELFAND: Logistically, just for within the  
7 Southern District of New York, as far as the ankle bracelet and  
8 things like that, where Mr. Teman has to go and when to get  
9 that? Florida?

10 THE COURT: I think he should report to pretrial right  
11 now, and they will guide him as to that. Pretrial is in 500  
12 Pearl.

13 MR. GELFAND: OK.

14 THE COURT: Anything else other than the grand jury  
15 subpoena?

16 MR. BHATIA: No, your Honor.

17 MR. GELFAND: No, your Honor.

18 THE COURT: All right. So, we stand adjourned as it  
19 relates to the criminal case. We are now going to create a  
20 separate transcript.

21 (Trial concluded)